and rejected the appellant's evidence as untruthful. With that not having seen or heard the witnesses ourselves we cannot quarrel.

With regard to the second question, apart from any threat that might be implied in being shown the dead bodies on 3rd September, a point to which we shall come shortly, the only threats alleged by the appellant were of the words said to him in connection with the bodies at the time they were shown to him and when he was interviewed by A.S.P. Yeoh. That evidence was contradicted by the prosecution witnesses and their evidence was accepted by the judge.

As regards his allegations of being assaulted, though his evidence on this was not contradicted in terms it is difficult to see how the judge could be expected to accept it when the appellant had been contradicted on so many other points by witnesses whom the judge accepted as truthful. And there was the further consideration that although he called a number of police witnesses, as to his movements, and indeed was granted an adjournment to enable him to call them, the appellant made no attempt to call the doctor to whom he said he had made complaints at the time and who might well have been regarded, from his point of view, as a more impartial witness than any police officer. Finally he did not claim that on 4th September he was in any way influenced by the alleged assaults to do something which he strongly denied having done.

As regards any suggestion that his being asked to identify the dead bodies might have operated as some sort of implied threat the possibility of this seems to be so remote as to call for being disregarded. All he was asked was whether he could identify them and according to the prosecution evidence, which was believed, there was nothing more. If any impression was made on his mind the wording of the caution which was found in fact to have been administered to him before he made his statement was reasonably adequate to remove the effect of it and there was the evidence of Corporal Wong, the interpreter, that at the time of making the statement he did not appear to be frightened.

Nor can we see any substance in the suggestion that, because when making his statement the appellant was handcuffed and there were armed police outside the room, the appellant had any reason to believe that his freedom to refrain from making a statement was any less than was conveyed to him by the words of the caution. He knew he was a prisoner, it is only reasonable to accept that in the prevailing conditions, which were akin to conditions of war, practically every man in uniform whom he had seen since his arrest was armed. As regards his being handcuffed, that was a reasonable precaution the force of which he himself must have recognised and in any event again there was nothing in it to detract from the force of the caution.

In all the circumstances we can see no grounds for holding that the statement was not properly admitted in evidence.

We would add that the case had little if anything in common with the case of *Lim Sing Hiaw* v. *Public Prosecutor* [7] which was cited to us though not at the trial. That was a case where the prisoner had alleged that prior to his having made a statement to the police which was tendered by the prosecution (which he admitted making) another statement had been elicited from him by threats by special branch officers. His evidence was completely uncontradicted at the trial and we held that when he was subsequently interviewed by the police something more than the usual caution should have been administered to dissipate any possible effect remaining on his mind that the improper means which had elicited his earlier statement were reasons for thinking that he was not free to refrain from making the second one. There was nothing of the sort here. On most points here the appellant's evidence was contradicted and the judge weighed up the contradicting bodies of evidence before admitting the statement to the police. Moreover in the present case the appellant had made no previous statement except to identify a body and regarding that statement there was evidence which the judge accepted to the effect that no improper means were used to obtain it and in any event he denied having made the statement to the police which was tendered by the prosecution.

And quite apart from the statement there was ample evidence not merely to support a conviction but to make a conviction virtually inevitable.

The appeal is dismissed.

Appeal dismissed.

PUBLIC PROSECUTOR v. LIM GEOK LOW

[R.Cr.J. (Ong Hock Thye Ag.C.J.) November 18, 1965]

[K.L. — Criminal Revision No. 26 of 1965]

Sentence — Excessive sentence imposed — Penal Code, s. 71.

The defendant had been convicted of the offences of using an unlicensed public service vehicle, contrary to section 92(1) of the Road Traffic Ordinance, 1958; of using a vehicle for a purpose for which a licence fee chargeable is higher than that charged for the licence actually held, contrary to section 22(2) of the Ordinance; and of using a vehicle in such a manner that the insurance against third party risks ceases to be in force, contrary to section 74(1) of the Ordinance. The president of the session court imposed a fine of $2,000 or 4 months imprisonment on the first charge, $800 or 2 months' imprisonment on the second charge

and $800 or 2 months' imprisonment on the third charge.

Held: the punishments imposed were excessive and in disregard of the provisions of section 71 of the Penal Code and must therefore be set aside.

CRIMINAL REVISION.

Ong Hock Thye Ag.C.J.: This matter came to my notice purely by chance. On July 28, 1965 a husband and wife were convicted in the sessions court, Kuala Lumpur, as driver and owner respectively, of a car which the former used for the purpose of carrying passengers for hire or reward, in contravention of sections 92(1), 22(2) and 74(1) of the Road Traffic Ordinance, 1958. Section 92 prohibits the use of unlicensed public service vehicles; section 22 relates to the user of a vehicle for a purpose for which the licence fee chargeable is higher than that charged for the licence actually held; and section 74 relates to the user of a vehicle in such a manner that the insurance against third party risks ceases to be in force.

The maximum penalty provided for an offence under section 92(1) is imprisonment for 6 months, or a fine not exceeding $2,500 or both. Under subsection (4) the court may, in addition, make an order for forfeiture of the vehicle concerned. For an offence under section 22(2) the maximum penalty is a fine of $1,000 only and for an offence under section 74 such penalty is imprisonment up to 3 months or a fine not exceeding $1,000 or both, together with disqualification from driving.

I was shocked to observe that the president's sentence on the first defendant was (i) a fine of $2,000, or 4 months imprisonment in default, (ii) a fine of $800, or 2 months imprisonment in default, (iii) a fine of $800, or 2 months imprisonment in default and (iv) disqualification from driving for one year. This defendant is at present serving a cumulative sentence of 8 months' imprisonment.

The second defendant was fined $200, $100 and $200 or to undergo 2 months, 1 month and 2 months' imprisonment in default. I am informed that she was released from prison on August 16, 1965 on payment of $434.50. In her case nothing requires to be done.

A total fine, however, of $3,600 or 8 months' imprisonment in default, on the first defendant, is so Draconian that it cannot possibly be allowed to stand. The couple were fined a total of $4,100. They had probably also lost the deposit and instalments paid on their car, which must run to at least $2,000.

The punishment imposed on the first defendant, furthermore, was in total disregard of the provisions of section 71 of the Penal Code.

It is rather a pity that I had not come to know of this case earlier. In the circumstances the sentence of imprisonment in default is reduced so that the first defendant should be discharged forthwith and I do so order.

Sentence of imprisonment in default reduced.

GOVINDOO & ANOR. v. LEONG KONG WING & ORS.

[O.C.J. (Ismail Khan J.) November 13, 1965]

[Seremban — Civil Suit No. 98 of 1965]

Practice and Procedure — Interlocutory judgment — Setting aside — R.S.C. 1957, O. 13 rr. 5 & 12.

The applicants applied to set aside an interlocutory judgment for damages for negligence on the ground that the plaintiffs had failed to file a statement of claim at the time such judgment was entered against them; and also on the ground that the applicants had a substantial defence to the claim.

Held: (1) as the action was for pecuniary damages that is in this case, damages for tort, it was not necessary for the plaintiff to file a statement of claim before obtaining the interlocutory judgment;

(2) the court has an absolute discretion to set aside such a judgment and as the defendants had a defence of denial of liability and contributory negligence, the judgment will be set aside on the defendants paying the costs thrown away.

CIVIL SUIT.

N. Ramachandran for the plaintiffs.

Cheng Tim Pin for the defendants.

Ismail Khan J.: In this application made by way of summons in chambers the defendants seek to set aside the interlocutory judgment entered for the plaintiffs on the grounds that the plaintiffs had failed to file an affidavit of service or the statement of claim, at the time such judgment was entered against them. The defendants rely on Order 13 rule 12 which reads:

"In all actions not by the rules of this Order otherwise specially provided for, in case the party served with the writ does not appear within the time limited for appearance, upon the filing by the plaintiff of a proper affidavit of service, and if the writ is not specially indorsed under Order 3, Rule 6, of a statement of claim, the action may proceed as if such party had appeared, subject, as to the actions where an account is claimed, to the provisions of Order 15."

This rule applies in cases not otherwise provided for by this Order. I cannot see how the defendants can invoke this rule.

The plaintiff's action is for damages for actionable negligence, that is, damages for tort, and that is provided for by rule 5 which is as follows:—

"Where the writ is indorsed with a claim for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, and the defendant fails, or all the defendants, if more than one, fail, to appear, the plaintiff may enter interlocutory judgment and the judgment shall direct an enquiry to be held to assess the value of the goods and the damages, or the damages only, as the case may be, in respect of the